

SALMON RIVER CATTLEMEN'S ASSOCIATION, INC.

IBLA 78-503

Decided February 28, 1979

Appeal from decision of Elko, Nevada, District Office, Bureau of Land Management, rejecting amended claim of ownership to horses on public lands (27-01-3083).

Reversed and remanded.

1. Wild Free-Roaming Horses and Burros Act

A district office decision denying an amended claim for ownership of horses under sec. 5 of the Wild Free-Roaming Horses and Burros Act of Dec. 15, 1971, 16 U.S.C. § 1335 (1976), will be reversed where appellant shows that due to the vastness and nature of the terrain involved the original claim was only an estimate of the number of horses within the allotment, that the additional horses claimed are progeny of the original horses gathered as authorized by BLM, that the allotment on which these horses are located is fenced, that appellant applied to amend its claim, and that appellant has never conceded ownership of these horses.

APPEARANCES: Wilson, Wilson, and Barrows, Ltd., Elko, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Salmon River Cattlemen's Association, Inc., appeals from a decision of the Elko, Nevada, District Office, Bureau of Land Management (BLM), rejecting its amended claim of ownership of 208 horses on the

Salmon River allotment. The claim was filed on April 17, 1978, pursuant to section 5 of the Wild Free-Roaming Horses and Burros Act of December 15, 1971, 16 U.S.C. § 1335 (1976). 1/

The record shows that appellant filed its original claim for 300 horses in 1973. An authorization to gather the requested horses was issued by BLM on February 19, 1974. Thereafter four extensions of time covering a period of 4 years were requested and granted, the last one effective from June 15, 1977, to February 28, 1978. A total of 543 horses were captured and were considered as part of the original claim including progeny. On March 7, 1978, BLM issued a decision entitled "Termination of Horse Claim." This decision stated:

1. The 543 horses gathered were the 300 horses claimed and their progeny. This satisfies your claim.
2. All unbranded horses remaining in the Salmon River Allotment are wild and free-roaming and as such are subject to the provisions of P.L. 92-195, the Wild Horse and Burro Act of 1971.
3. Any branded horses gathered in conjunction with future Bureau of Land Management wild horse roundups will be treated under the state estray laws.

This action is in accordance with Public Law 92-195 and 43 CFR 4720.2. If you believe this decision is adverse or incorrect, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, within 30 days from the receipt of this decision, in accordance with the regulations in 43 CFR par 1840 (see enclosed Information on Taking Appeals to the Board of Land Appeals (Form 1842-1). However if an appeal is to be taken, the notice of appeal must be timely filed in the Elko District Office so that the case file may be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Appellant did not appeal the decision of March 7, 1978, but filed a supplemental claim for 208 horses on April 13, 1978. By decision of May 19, 1978, BLM denied the supplemental claim, citing the following reasons:

1. Salmon River Cattlemen's Association, Inc. letter of July 18, 1977 to the Elko District Manager indicated a

1/ Amended by section 404 of the Federal Land Policy and Management Act of October 21, 1976, 16 U.S.C. § 1338a (1976), and further amended by the Act of October 25, 1978, 92 Stat. 1803.

willingness for some Wild Free Roaming horses to remain on your allotment.

2. Testimony given by a representative of the Salmon River Cattlemen's Association at the National Wild Horse Forum held April 5-7, 1977 in Reno, Nevada, indicated that a minimum of 50 horses and a maximum of 150 horses could be considered as Wild and Free Roaming horses on your allotment.

3. A Bureau of Land Management inventory of horses on the Salmon River Allotment was completed in February of 1975. There were 646 horses counted on the allotment, however no supplemental claim was filed by the Association pursuant to that inventory.

4. Salmon River Cattlemen's Association, Inc. original claim of ownership was for 300 horses. This claim was approved by the district manager on January 16, 1974. A total of 543 horses were captured and were considered as a part of the original claim including progeny. The original claim was terminated by a district manager's decision on March 7, 1978, with no appeal being filed by the claimants within the time limits.

5. The County Assessor's Tax Records do not reveal that Salmon River Cattlemen's Association, Inc. declared ownership or were assessed for these 208 horses in Elko County, Nevada.

6. Research of Bureau of Land Management files does not verify that the Association has ever applied for an authorization and/or license to graze horses on Salmon River Allotment.

7. The supplemental claim was not filed prior to November 15, 1973 as required by regulation.

8. Since no action has been taken previously to assert ownership of the horses covered in this supplemental claim they are considered as abandoned horses and would fall under the jurisdiction of PL 92-195.

In its statement of reasons, appellant explains that it purchased approximately 57,000 acres of private property in 1974 from Wilkins and Wunderlich and leased approximately 11,000 more acres from the Salmon River Canal Company. With this private land were BLM grazing rights on 324,163 acres of Federal land. Appellant says, "This became, and still is, a fenced private allotment with approximately 61,000 AUMs." When appellant purchased the land in 1974 and grazing rights it also acquired ownership of the horses in the allotment.

Appellant says that all of the horses within the allotment are progeny of the horses purchased by the Association in 1947. Appellant admits that it gathered 543 horses and paid the trespass fees, but that over 200 horses still remain on the Federal land. Appellant says that Lee Wangsgard, Range Manager, advised it to file a supplemental claim rather than appeal BLM's decision of March 7, 1978.

Appellant contends that it owns all the horses in the allotment and has never conceded, acknowledged, or agreed to the contrary. Therefore, appellant reasons, these horses are not "wild and free roaming" as defined by the Act, supra.

Appellant notes that the Act, supra, does not put any deadline on claiming the horses. Considering the quantity and quality of the lands involved, appellant explains that any inventory made within the 90-day time period set by the regulation would necessarily be a rough estimate. Appellant asserts that the fact that it underestimated the number of horses in its original claim should have no bearing on its legal rights of ownership of all horses in its "private, fenced allotment." Therefore, appellant argues, the 90-day limit on the filing of the horse ownership claims is a taking of property without due process of law.

Appellant contends that BLM is estopped to assert the defense that the Association did not appeal BLM's March 7, 1978, decision. Appellant claims that it constructed horse traps at considerable expense with the expectation of being able to collect all of its horses, and thus incurred a substantial loss in reliance upon the conduct and representations of BLM.

[1] A review of the facts in this case leads us to the conclusion that the appellant should be given additional time to gather its horses. Over 324,000 acres of Federal lands are included in the allotment. In view of the vastness and nature of the terrain involved, it is understandable that it was difficult for appellant to make an exact determination of the number of horses in its original claim. In a letter to BLM dated October 10, 1973, prior to filing its claim of ownership, appellant stated that "we would like to file a claim for an estimated 300 head of horses now running on our range." (Emphasis added.) Thus, from the outset, it was apparent that the "300" figure was only an estimate and that appellant never intended to relinquish claim to any of the horses within the allotment. Appellant emphasized this in its July 18, 1977, letter to the Elko District Manager as follows:

The Salmon River Cattlemen's Assn. Inc., respectively requests that ownership of all horses on our range be recognized to us.

While we realize that in our letter of October 10, 1973 we claimed an estimated 300 horses, it was not our

intent to concede ownership to any other person or agency because of the lack of an accurate inventory by our Association or the B.L.M.

The purpose of the July 18, 1977, letter was to ask BLM to view the October 10, 1973, letter as a "poor" estimate of its horse numbers and to request an amendment to its claim. BLM did not respond to appellant's request. Since many of the horses in the supplemental claim are progeny of the horses in the original claim, we consider the additional horses to be part of the original claim.

In its decision denying the supplemental claim, BLM states that the supplemental claim was not filed prior to November 15, 1973, as required by regulation. In this instance, we do not find that appellant's request for additional horses is precluded by this regulation because such request is an amendment to the original claim filed within the time prescribed.

In light of the facts of this particular case we remand the case to BLM to authorize appellant 1 year from the date of receipt of this decision in which to gather the remaining horses. See George B. Shaffner, 26 IBLA 320 (1976). We feel that this is a reasonable amount of time due to the fact that appellant has had several previous extensions of time in which to gather its horses and the fact that BLM may authorize the use of helicopters to facilitate the gathering process pursuant to 43 U.S.C. § 1338a (1976). The gathering will be conducted in accordance with the regulations and requirements set by BLM in its authorization to gather. 43 CFR Subpart 4720. No further extensions of time will be granted and horses not gathered within 1 year will be presumed to have been abandoned.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District Office is reversed and the case remanded to that office for action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

James L. Burski
Administrative Judge

